DOCKET NO: NNH-CV20-6109292-S	:	SUPERIOR COURT
FRIENDS OF KENSINGTON PLAYGROUND, ET AL	:	J.D. OF NEW HAVEN
VS.	:	AT NEW HAVEN
CITY OF NEW HAVEN	:	OCTOBER 20, 2021

MOTION TO STRIKE

Pursuant to Connecticut Practice Book § 10-39, the Defendant, CITY OF NEW HAVEN, hereby moves to strike the Plaintiffs' Revised Complaint, dated August 19, 2021, which purports to assert a claim pursuant to Connecticut General Statutes § 22a-16 (hereinafter, "CEPA"). As is more fully set forth in the Defendant's Memorandum of Law contemporaneously filed herewith, the allegations contained therein are insufficient to state a cause of action under CEPA, and accordingly, the Complaint should be stricken in its entirety.

WHEREFORE, for the Defendant's Motion to Strike should be granted.

THE DEFENDANT,
CITY OF NEW HAVEN

By: /s/ 302180

James J. Perito, Esq.
Nancy Valentino, Esq.
HALLORAN & SAGE LLP
One Century Tower
265 Church Street- Suite 802
New Haven, CT 06510
Tel: 203-672-5432
Fax: 203-672-5480
Email: perito@halloransage.com;
valentino@halloransage.com
Juris No. 302180- Their Attorneys

CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered today to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served.

Keith Robert Ainsworth, Esq.
51 Elm Street
Suite 201
New Haven, CT 06510
keithrainsworth@live.com
For the Plaintiffs

Susman Duffy & Segaloff PC
700 State Street
Suite 100
New Haven, CT 06511
kkravetz@susmanduffy.com
For the Intervening Defendant

By: /s/ 302180
James J. Perito, Esq

DOCKET NO: NNH-CV20-6109292-S	:	SUPERIOR COURT
FRIENDS OF KENSINGTON PLAYGROUND, ET AL	:	J.D. OF NEW HAVEN
VS.	:	AT NEW HAVEN
CITY OF NEW HAVEN	:	OCTOBER 20, 2021

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

I. BACKGROUND

This action was initiated by way of Summons and Complaint filed November 13, 2020, and involves property owned by the City of New Haven (hereinafter, the "Park") which is to be transferred to a third party for the development of affordable housing units.

In their Revised Complaint filed August 19, 2021 (hereinafter, the "Complaint"), Plaintiffs allege, *inter alia*:

> "8. …the city of New haven…approved the transfer of the Park to a third party for the purpose of residential construction, a purpose which is not a park or open space.
>
> 9. The action of the City will result in a permanent loss of playground and park open space….
>
> 14. The removal of the Park is likely to have the effect of:
> …
> b. reducing the forest canopy and ecological services provided by the trees and vegetation in the Park.
> …
>
> 19. The Park is a form of open space that constitutes a natural resource of the State.
>
> 20. [and] the Defendant's…failure to replace [the Park] with unfragmented comparable park land…constitutes an unreasonable impairment of natural resources…as described above."
>
> (See Revised Complaint, ¶¶ 8, 9, 14b.,19, 20).

The aforementioned allegations are insufficient to state a cause of action under CEPA, and accordingly, the Complaint should be stricken.

II. LAW AND ARGUMENT

a. Legal Standard

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 498 (2003). "The role of the trial court [in ruling on a motion to strike is] to examine the [complaint], construed in favor of the plaintiffs, to determine whether the [pleading party has] stated a legally sufficient cause of action." Dodd v. Middlesex Mutual Assurance Co., 242 Conn. 375, 378 (1997).

"In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." Faulkner v. United Tech. Corp., 240 Conn. 576, 580 (1997). The Court must construe the facts in the Complaint most favorably to the plaintiff. Novametrics Medical Systems, Inc. v. BOC Group, Inc., 224 Conn. 210, 214-15 (1992).

A Motion to Strike "does not admit legal conclusions or the truth or accuracy of the opinions stated in the pleadings." Mingachos v. CBS, Inc., 195 Conn. 91, 108 (1985). As such, "[a] Motion to Strike is properly granted if the Complaint alleges mere conclusions of law that are unsupported by the facts alleged." Novametrics Medical Systems, Inc., 224 Conn. at 215.

b. The Allegations Contained in the Complaint are Insufficient to Support a Claim Under CEPA

Connecticut General Statutes § 22a-16, provides:

> "…any person … may maintain an action in the superior court … for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in

> the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction …."
>
> C.G.S. § 22a-16

In an action alleging a violation of § 22a-16, however, a "[c]omplaint does not sufficiently allege standing to bring action … by merely reciting the statutory provision permitting such suit, but must set forth facts to support inference that unreasonable pollution, impairment or destruction of natural resource will probably result from challenged activities unless remedial measures are taken. Burton v. Commissioner of Environmental Protection, 291 Conn. 289, 802 (2009); Lewis v. Planning and Zoning Com'n of Town of Clinton, 49 Conn.App. 684 (1998).

Here, the Plaintiffs fail to allege with any specificity whatsoever: 1) the unreasonable harm that is likely to occur upon the alleged conduct (i.e., the transfer of the property); or 2) provide any indication as to how or why the conduct is likely to cause the harm. Instead, Plaintiffs rely on legal conclusions and bare-bones assertions.

Specifically, Plaintiffs allege the "Park is a form of open space that constitutes a natural resource of the State" and that the "taking of the Park and failure to replace it with unfragmented comparable park land …constitutes an unreasonable impairment of natural resources in violation of Conn.Gen.Stat.§ 22a-16." (Revised Complaint, ¶ 19). This allegation is nothing more than a legal conclusion in the form of language taken directly from the statute itself.

The Plaintiffs go on to allege the Park will not be replaced with "unfragmented comparable park land," but fail to allege that this action would likely result in an unreasonable impairment or even identify what the unreasonable impairment might be. Similarly, Plaintiffs also allege the conduct of the City will likely, in some identified manner, have the effect of "reducing the forest canopy and ecological services provided by the trees and vegetation in the

Park" but, again, fail to allege facts identifying the unreasonable pollution, impairment or destruction that would likely result. In fact, the Complaint contains no allegations as to how or why the trees and vegetation would be affected by a transfer of the Park property at all.

"Our case law establishes that, to set forth a colorable claim under § 22a-16, the [plaintiffs] must provide an indication as to *how* or *why* [the challenged conduct] is likely to cause unreasonable harm to the environment." Fort Trumbull Conservancy v. New London, 265 Conn. 423, 433 (2003). Here, as in Fort Trumbull Conservancy, the allegations of the complaint do not give rise to an inference of unreasonable harm to the environment. While the Plaintiffs "need not prove [their] case at this stage of the proceedings…the plaintiff nevertheless must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment." Burton v. Commissioner of Environmental Protection, 291 Conn. 789, 802-04 (2009).

The Plaintiffs have failed to sufficiently allege a cause of action under C.G.S. 22a-16 and, therefore, the Complaint should be stricken in its entirety.

WHEREFORE, for the foregoing reasons, the Defendant's Motion to Strike should be granted.

THE DEFENDANT,
CITY OF NEW HAVEN

By: /s/ 302180

James J. Perito, Esq.
Nancy Valentino, Esq.
HALLORAN & SAGE LLP
One Century Tower
265 Church Street- Suite 802
New Haven, CT 06510
Tel: 203-672-5432
Email: perito@halloransage.com;
valentino@halloransage.com
Juris No. 302180- Their Attorneys

CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered today to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served.

Keith Robert Ainsworth, Esq.
51 Elm Street
Suite 201
New Haven, CT 06510
keithrainsworth@live.com
For the Plaintiffs

Susman Duffy & Segaloff PC
700 State Street
Suite 100
New Haven, CT 06511
kkravetz@susmanduffy.com
For the Intervening Defendant

By: /s/ 302180
James J. Perito, Esq